



PUBLIC NOTICE

Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
REQUESTS COMMENT ON REVISION OF PERFORMANCE REQUIREMENTS
FOR 2.3 GHz WIRELESS COMMUNICATIONS SERVICE

WT Docket No. 07-293

Comment Date: [15 days after publication in the Federal Register]

Reply Comment Date: [25 days after publication in the Federal Register]

By the Commission:

1. By this Public Notice and for the reasons stated below, we seek comment on revising the performance requirements (also known as “buildout” or “construction” requirements) for the 2.3 GHz Wireless Communications Service (WCS) band.

2. In December 2007, the Commission released a Notice of Proposed Rulemaking seeking comment on the possible revision of certain WCS technical rules to facilitate the coexistence of operations in the WCS band (2305-2320 MHz, 2345-2360 MHz) with operations in the adjacent Satellite Digital Audio Radio Service (SDARS) band (2320-2345 MHz).¹ The Commission has sought to develop a record that would enable the provision of innovative broadband services in the 2.3 GHz WCS band and provide licensees increased spectrum rights. We now seek comment on the performance requirements that would accompany such rule changes.

3. The current construction requirement for all spectrum blocks in the 2.3 GHz WCS band is a substantial service showing at the end of the license term.² We seek comment on whether, if we alter the technical rules for this band, we should also revise the substantial service performance requirements. We note that the WCS A and B spectrum blocks are licensed in 52 Major Economic Areas (MEAs), which are

¹ See Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band and Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking*, WT Docket No. 07-293 and IB Docket No. 95-91, 22 FCC Rcd 22123 (2007) (“2007 Notice”).

² Section 27.14(a) of the Commission’s rules provides that 2.3 GHz WCS licensees “must, as a performance requirement, make a showing of ‘substantial service’ in their license area within the prescribed license term set forth in § 27.13.” 47 C.F.R. § 27.14(a). The rule defines substantial service “as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal.” *Id.* Section 27.14(a) provides that failure by any WCS licensee to meet its performance “requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.” *Id.*

comprised of 172 Economic Areas (EAs), and that the WCS C and D spectrum blocks are licensed in 12 Regional Economic Area Groupings (REAGs), which are comprised of 52 MEAs. In order to aid our consideration of alternative performance requirements for the 2.3 GHz WCS band, we request that interested parties comment on the following requirements and possible alternatives to the following:

- For mobile and point-to-multipoint services, reliable signal coverage to:
 - 40% of a license area's population within 30 months; and
 - 75% of a license area's population within 60 months.
- For point-to-point services, construction and operation of point-to-point links:
 - 15 per million persons in a license area within 30 months;
 - 30 per million persons in a license area within 60 months; and
 - A minimum payload capacity (megabits/second for a given bandwidth) to ensure that the spectrum is used intensively.³

4. We also seek comment on whether, consistent with the Commission's approach for the commercial 700 MHz bands,⁴ we should require WCS licensees to fulfill performance requirements for an entire license area and for defined market areas therein. For MEA licenses, the defined market areas would be EAs, and for REAG licenses, the defined market areas would be MEAs. Under this approach, if a licensee fails to meet a performance requirement for an entire license area or for any defined market area, its entire license would terminate automatically. We request that interested parties comment on the following and possible alternatives to the following:

- For mobile and point-to-multipoint services, the license area coverage requirements of 40% and 75% as proposed above and reliable signal coverage to:
 - 25% of each defined market area's population within 30 months; and
 - 50% of each defined market area's population within 60 months.
- For point-to-point services, construction and operation of a minimum number of links as proposed above, and:
 - A minimum number of links in defined market areas within 30 and 60 months, respectively. We seek comment on the minimum number of links we should require for each EA within an MEA, and for each MEA within a REAG.

³ We note that under section 101.141 of the Commission's rules, for example, a link with a 5 MHz bandwidth would be required to provide 18.5 megabits/second in capacity. 47 C.F.R. § 101.141.

⁴ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement Under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289, 15348-55 ¶¶153-175 (2007) (subsequent history omitted).

5. *Compliance Procedures.* Consistent with section 1.946(d) of the Commission's rules, we propose that licensees demonstrate compliance with any revised performance requirements by filing a construction notification within 15 days of the relevant benchmark certifying that they have met the applicable performance requirements.⁵ Each construction notification should include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.⁶

6. Electronic coverage maps must clearly and accurately depict the boundaries of each license area (REAG or MEA) in the licensee's service territory. Further, REAG maps must depict MEA boundaries and MEA maps must depict EA boundaries. If the licensee's signal does not provide service to the entire license area, the map must clearly and accurately depict the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each REAG or MEA within its license service territory and the type of technology it is utilizing to provide such service. Supporting documentation must provide the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee's technology.

7. We envision that when a licensee files its construction notification package, the public will be afforded an opportunity to review and comment on the construction notification, including the licensee's coverage maps and the technical assumptions used to create the maps. If the Commission determines that a licensee has not met the applicable performance benchmarks for a license area, the license will be deemed to have terminated automatically as of the applicable performance benchmark deadline without further Commission action.

Procedural Matters

8. **Comment Filing Procedures.** Comments are due **no later than 15 days after publication in the Federal Register**. Reply comments are due **no later than 25 days after publication in the Federal Register**. All filings should reference the docket number of this proceeding, WT Docket No. 07-293. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 07-293. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.

⁵ See 47 C.F.R. § 1.946(d) ("notification[s] must be filed with Commission within 15 days of the expiration of the applicable construction or coverage period").

⁶ See, e.g., 47 C.F.R. § 1.17 (Truthful and accurate statements to the Commission); 47 C.F.R. § 1.917(c) ("[w]illful false statements . . . are punishable by fine and imprisonment, 18 U.S.C. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to 312(a)(1) of the Communications Act of 1934, as amended").

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail due to security measures). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered and/or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, D.C. 20554.

9. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via email to fcc@bcpiweb.com. Documents in WT Docket No. 07-293 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

10. **Ex Parte Presentations.** This proceeding has been shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.⁸ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.⁹

11. **Accessible Formats.** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

12. **Initial Regulatory Flexibility Analysis.** As required by the Regulatory Flexibility Act of 1980 (RFA),¹⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Public Notice. The analysis is found in Appendix A. We request written public comment on the analysis. Comments must be filed by the same dates as listed in paragraph 9, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental

⁷ 47 C.F.R. § 1.1200 *et seq.*

⁸ *See id.* § 1.1206(b)(2).

⁹ *Id.* § 1.1206(b).

¹⁰ 5 U.S.C. § 603.

Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

13. Initial Paperwork Reduction Analysis. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

14. Further Information. For further information regarding this Public Notice, please contact Richard Arsenault, Chief Counsel of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0920, richard.arsenault@fcc.gov.

15. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 301, 303, 308, 309, and 332 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 301, 303, 308, 309, 332, that this Public Notice is hereby ADOPTED.

16. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Public Notice, and that comment is sought on these proposals.

17. IT IS ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Public Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Action by the Commission March 29, 2010: By Chairman Julius Genachowski, and Commissioners Michael J. Copps, Robert McDowell, Mignon L. Clyburn, and Meredith A. Baker.

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APPENDIX

Initial Regulatory Flexibility Analysis

Public Notice in WT Docket No. 07-293

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and requirements proposed in this *Public Notice (Notice)*. Written public comments are requested on this IRFA. **Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice.** The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

The primary objective of the *Notice* is to consider changes to the rules governing performance requirements (also known as construction or buildout requirements) for the 2.3 GHz Wireless Communications Service (WCS), which may be necessary to promote the rapid deployment of new and innovative wireless services to the American public. Such rule changes are needed because the Commission may ease certain rules governing operations in the 2.3 GHz WCS band and thereby enable the deployment of new services in the band. Thus, appropriate performance rules for WCS are necessary to ensure that the spectrum is rapidly developed in the public interest. In sum, the *Notice* is intended to enhance the record on any necessary performance requirements that would ensure WCS licensees maximize spectrum use in the public interest.

B. Legal Basis for Proposed Rules

The proposed action is authorized under Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ See 5 U.S.C. § 601(6).

the same meaning as the term “small business concern” under the Small Business Act.⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁷ Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the performance rule changes explored in the *Notice*.

WCS Licensees. The Wireless Communication Service in the 2305-2360 MHz (2.3 GHz) frequency band has flexible rules that permit licensees in this service to provide fixed, mobile, portable, and radiolocation services. Licensees are also permitted to provide satellite digital audio radio services. The SBA rules establish a size standard for “Wireless Telecommunications Carriers,” which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons.⁸ There are currently 155 active WCS licenses held by 10 licensees. Of these, 7 licensees qualify as small entities and hold a total of 50 licenses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *Notice* seeks to evaluate whether changes to the existing performance requirements for 2.3 GHz WCS licenses may ultimately foster more effective use of the spectrum to better meet the needs of today's consumers. To the extent the Commission's past decisions no longer reflect the best approach regarding performance requirements the *Notice* seeks comment on the possibility of making appropriate adjustments that will serve the public interest.

The *Notice* proposes that licensees demonstrate compliance with any revised performance requirements by filing a construction notification within 15 days of the relevant benchmark certifying that they have met the applicable performance requirements. It proposes that each construction notification should include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

Further, under the *Notice*'s proposed compliance procedures, electronic coverage maps must clearly and accurately depict the boundaries of each license area (REAG or MEA) in the licensee's service territory, with REAG maps depicting MEA boundaries, and MEA maps depicting EA boundaries. If the licensee's signal does not provide service to the entire license area, the *Notice* provides that the map must clearly and accurately depict the boundaries of the area or areas within each license area not being served. The proposed compliance procedures directs each licensee to file supporting documentation certifying the type of service it is providing for each REAG or MEA within its license service territory and the type of technology it is

⁵ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

⁶ See Small Business Act, 5 U.S.C. § 632 (1996).

⁷ See 5 U.S.C. § 601(4).

⁸ See 13 C.F.R. § 121.201, NAICS code 517110.

utilizing to provide such service. Further, the proposed compliance procedures would require the supporting documentation to provide the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee's technology.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁹

The *Notice* specifically invites comments on a range of potential performance requirements and invites interested parties to suggest alternative proposals. At this time, the Commission has not excluded any alternative proposal concerning performance requirements from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

In the *Notice*, the Commission discusses possible reporting requirements to ensure that spectrum is used intensively in the public interest. In particular, the Commission is considering a proposal to require licensees to provide additional reports demonstrating the level of service provided to the public. However, the Commission will not consider any alternative that would have a significant and unjustifiable adverse economic impact on small entities.

The Commission solicits any alternative proposals that would not incur significant and unjustifiable adverse impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

⁹ See 5 U.S.C. § 603(c).